THE DEFINITION OF A TRUST.

THERE have been many definitions of a trust, more perhaps than of any other common legal institution. While most of these definitions embody the great characteristic feature of a trust,—the separation of the technical from the beneficial ownership of property, they differ radically according to the particular point of view from which the definition is framed. Trusts have been defined from the standpoint of the settlor, and of the trustee, and of the *cestui que trust,* and of both the trustee and the *cestui que trust.* They have also been defined with respect to the court having jurisdiction over them. It is possible also to frame a definition with reference to the act by which they are created, and perhaps with reference to the property which constitutes their subject-matter. As might be expected, none of the usual definitions have met with general acceptance. A definition from one point of view of something which, with equal propriety, may be defined from another point of view, cannot be satisfactory. It is either incomplete or ill balanced. The ideal definition of a trust should present the idea of a trust in its completeness, according to its real nature, and not with reference to particular features or parties. So far as the writer knows, there is no such definition in the books.

The difficulty of framing a satisfactory definition has been recognized. In a recent English text-book on Equity the author remarks:[1] "No endeavor is here made to define a trust. Most of those writers or judges who have attempted such a defition have done little to assist the world to a clear conception of what a trust is." In this connection Professor Maitland says:[2] "Where judges and text-writers fear to tread, professors of law have to rush in. I should define a trust in some such way as the following,—when a person has rights which he is bound to exercise upon behalf of another or for the accomplishment of some particular purpose, he is said to have those rights in trust

[1] STRAHAN AND KENDRICK, DIGEST OF EQUITY, 49.
[2] MAITLAND, EQUITY, 44.

for that other or for that purpose and he is called a trustee. It is a wide, vague definition, but the best that I can make." If this is the best that so accomplished a scholar as Professor Maitland could do, it must be no easy task to frame a good definition of a trust. Yet every lawyer knows what a trust is; why, then, should it not be possible to define it?

The explanation of the striking divergence in the conceptions of a trust shown in the various definitions may, perhaps, be found in the history of the development of uses and trusts. The stages of this development may be clearly traced in the several types of definitions. The early definitions, for example, that of Lord Coke, denote the use or trust as first invented. The later definitions emphasize the successive steps in the development of the original use into the modern trust. The definitions may be classified so as to correspond to these stages of development. Some of the definitions framed by modern authorities belong historically to earlier periods, the influence of the early definitions being clearly apparent in those of later date. For the purpose of study the various definitions of a trust may be grouped as follows:

I. The earliest type of definition of a trust (or use) was framed from the standpoint of the creator of the trust, who in early times was commonly himself the beneficiary. At the head of the list should be placed the classic definition of Lord Coke:[3] "A use is a confidence reposed in some other, not issuing out of the land, but as a thing collateral, annexed in privity to the estate of the land, and to the person touching the land, for which the *cestui que use* has no remedy but by subpœna in chancery." The definition of Lord Bacon, Coke's contemporary, is similar:[4] "An use is a trust reposed by any person in the terretenant, that he will suffer him to take the profits, and that he will perform his intent." The notion of a use or trust as a *confidence* is found also in Lord Hardwicke's declaration that,[5] "A trust is where there is such confidence between parties that no

[3] Quoted with approval in PERRY, TRUSTS, § 13.

[4] Quoted in 1 CRUISE, REAL PROPERTY, 402, from Bacon's Readings on the Statute of Uses.

[5] Sturt *v.* Mellish, 2 Atk. 610.

action at law will lie, but is merely a case for the consideration of this [chancery] court."

The appropriateness of defining a use or trust in early times with special reference to the confidence reposed by the creator in the trustee, is clear when it is borne in mind that at first there was no way of enforcing the rights of the beneficiary. A use was created by the transfer of property by the owner to another to be held by the latter for the benefit of the former or of a third person, but the rights of the beneficiary depended entirely upon the good faith of the transferee, who in law was deemed to be the legal owner of the property. The arrangement was wholly one of trust or confidence in the trustee. The rights of the beneficiary did not long remain in so precarious a state. The court of chancery soon compelled the trustee to live up to the requirements of the confidence reposed, but for a time the obligation was regarded as personal to the trustee and did not pass upon his death to his heir, who took the property clear of the obligation. Lord Coke's definition, above quoted, denotes the use or trust at what may be called the second stage of its development, namely, when the court of chancery assumed jurisdiction to enforce the obligation of the trustee.

The notion that a trust is primarily a confidence reposed in the trustee has persisted into modern times. Thus in a comparatively recent English case Lord Lindley said:[6] "A trust is really nothing except a confidence reposed by one person in another, and enforceable in a court of equity." Also, according to a still more recent English authority.[7] "A trust, in the modern and confined sense of the word, is a confidence reposed in a person with respect to property, of which he has possession or over which he can exercise a power, to the intent that he may hold the property or exercise the power for the benefit of some other person or object." And, more briefly, a Kentucky judge, in a late case, said:[8] "A trust is a confidence re-

[6] *In re* Williams, 2 Ch. 12, 19 (1897).

[7] LAWS OF ENGLAND, vol. 25, p. 5, quoted in Cartwright *v.* United States Bank & Trust Co., 23 N. M. 82, 167 Pac. 436 (1917).

[8] Sampson, J., in Moore *v.* Shifflett, 187 Ky. 7, 216 S. W. 614 (1920). See, also, Drudge *v.* Citizens' Bank, 64 Ind. App. 217, 113 N. E. 440 (1916).

posed in one person, called the trustee for the benefit of another, called the *cestui que trust,* with respect to property held by the former for the benefit of the latter."

II. From the conception of a trust as a confidence reposed in the trustee it is easy to pass to that of a trust as an obligation resting upon the trustee, and a trust has often been defined from this point of view. An approved definition of this type is that of Mr. Underhill, namely,[9] "A trust is an equitable obligation, either expressly undertaken, or constructively imposed by the court, under which the obligor (who is called a trustee) is bound to deal with certain property over which he has control (and which is called the trust property), for the benefit of certain persons (who are called the beneficiaries or *cestuis que trust*), and of whom he may or may not be one."

According to Mr. Jenks, a modern English authority,[10] "A trust is an obligation to hold and administer or deal with property conscientiously for the benefit of a person or persons other than the person subject to the obligation."

Some of the definitions of this class combine the notions of obligation and confidence. One of the best of these is that of Lord Stair, which is adopted by Mr. Perry, a trust being defined to be "an obligation upon a person arising out of confidence reposed in him to apply property faithfully and according to such confidence."[11] This definition is defective in not bringing out clearly the fact that the trustee has the title to the property. Also, it is broad enough to include a bailment. It is further defective in that it does not sufficiently state the interest of the *cestui que trust.* The first objection is met by this definition:[12] "A trust may be defined as an obligation arising out of a confidence reposed in one who has the legal title to property conveyed to him, that he will faithfully apply and deal with such property acording to the confidence reposed."

III. In the third class may be placed the definitions framed

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[9] UNDERHILL, TRUSTS, 1.

[10] JENKS' DIGEST OF ENGLISH CIVIL LAW, § 1765.

[11] PERRY, TRUSTS, § 2.

[12] 28 AM. & ENG. ENC. LAW (2d ed.), 858. See, also, Beers *v.* Lyon, 21 Conn. 604; Thornburg *v.* Buck, 13 Ind. App. 446, 41 N. E. 85.

from the standpoint of the beneficiary, the rights of whom form the basis of definitions of this type. Such definitions, of course, became appropriate only after the court of chancery began to enforce the rights of the beneficiary. Among the earliest of these definitions is that found in the description by Mr. Cruise of a use as "a right to the rents and profits of lands, whereof another person had the legal seizin and possession." [13] This type of definition is adopted by Kent and Story. Chancellor Kent says: [14] "A trust, in the general and enlarged sense, is a right on the part of the *cestui que trust* to receive the profits and dispose of the lands in equity." With more detail Mr. Justice Story says: [15] "A trust, in the most enlarged sense in which that term is used in English jurisprudence, may be defined to be an equitable right, title, or interest in property, real or personal, distinct from the legal ownership thereof." According to Mr. Bispham, who is notably happy in his definitions,[16] "A trust, in its technical sense, is the right, enforceable solely in equity, to the beneficial enjoyment of property of which the legal title is in another." More complete than any of these is the definition given by Mr. Black of a trust as, "an equitable or beneficial right or title to land or other property, held for the beneficiary by another person, in whom resides the legal title or ownership, recognized and enforced by courts of chancery." [17]

IV. A few authorities define a trust as a personal relation between the trustee and the *cestui que trust*. Thus in a Missouri case the court said: [18] "A trust is a relation between two persons, by virtue of which one of them (the trustee) holds property for the benefit of the other (the *cestui que trust*)." Similarly the Colorado court says: [19] "A trust, in its simplest form, is that relation between two persons by virtue of which one of them holds property for the benefit of the other." Mr. Bogert, in his recent book on trusts, adopts substantially the

[13] 1 CRUISE, REAL PROPERTY, 391.
[14] 4 KENT, COMM., 304.
[15] 2 STORY, EQUITY JURISP., § 964.
[16] BISPHAM, PRINCIPLES OF EQUITY, § 49.
[17] BLACK'S LAW DICTIONARY.
[18] Corby *v.* Corby, 85 Mo. 371.
[19] Cree *v.* Lewis, 49 Col. 186, 112 Pac. 326.

same definition, as follows:[20] "A trust is a relationship in which one person is the holder of the title to property, subject to an equitable obligation to keep or use the property for the benefit of another."

These definitions are excellent in that they give a more complete description of a trust than most of the definitions so far quoted. In the writer's opinion, however, they are fundamentally defective in defining a trust as a personal relation. No one would think of classifying the law of trusts as belonging to the Law of Persons, under which, of course, personal relationships are treated. According to this definition, trusts fall in the same general class as the relationships of husband and wife, parent and child, principal and agent, master and servant, partners, etc. But trusts are always discussed under the head of Property, where they undoubtedly belong. Any satisfactory definition of a trust must conform to the proper classification of trusts.

V. It is possible to define a trust with special reference to the act by which the trust is created, though, so far as the writer knows, this has never been done. Such a definition is suggested by Mr. Spence's references to uses and trusts as "conveyances of land upon confidence, or for a particular intent," and "feoffments upon trust," and "conveyances upon trust."[21] From this point of view a trust may be defined as a transfer of property to one person to be held or applied for the benefit of another. This would describe the usual form of trust, but would not include the case of declarations of trust by which the owner of property declares himself a trustee for another. In this case there is no transfer of the legal title, but only of the equitable title. However, any definitions along this line must be unsatisfactory in that they denote the act by which a trust is created rather that the thing itself.

Each of the several definitions of a trust quoted above emphasizes one or more special features of the notion of a trust, particularly the *confidence* reposed in the trustee, or the *obligation* resting upon the trustee, or the *right* of the beneficiary

[20] BOGERT, TRUSTS, 1.

[21] 1 SPENCE, EQUITY JURISDICTION, 439, 441, 443.

None of these definitions, however, goes to the bottom of the matter and tells us what a trust itself is. The difficulty of defining a trust grows out of the fact that a trust is a very complicated thing. It originates in a contract, or its equivalent, but it is not itself a contract; it involves a relationship of parties, but it is not itself a relationship; it relates to property, but it is not itself an estate; it depends upon or results in personal confidence and personal obligations and rights, but it is itself neither of these. What, then, is a trust?

In view of the lack of success that has attended the efforts of the notable array of distinguished authorities mentioned above who have attempted to define a trust, it may seem presumptuous for the writer to frame a definition of his own. However, it may be permissible for him to attempt to point the way toward a correct definition. The first step is the proper classification of a trust in the general arrangement of the law. A trust should not be classified under either the law of Persons, or the law of Obligations, or the law of Rights, but belongs under the head of the law of Property. It should therefore be defined from the standpoint of *property*. A few authorities have so defined it. Thus in a recent Indiana case the court said:[22] "A trust may be defined as a property right held by one party for the use of another." In this seems to be found the germ of a true definition of a trust. Mr. Abbott attempts a definition from a slightly different angle, defining a trust as "a holding of property, subject to the duty of employing it or applying its proceeds according to directions given by the person from whom it was derived."[23] Any definition, however, should include the notion of the duality of estates in a trust, the legal and the equitable estates being held by different persons. This, of course, is the main feature of a trust. Along this line, then, the following definition is tentatively proposed:

A trust is an arrangement of property in which the technical ownership is vested in one or more persons who are to hold, administer, or otherwise deal with the property, as may be directed, for the benefit of some other person or persons to whom

[22] Morris, J., in Keplinger *v.* Keplinger, 185 Ind. 81, 113 N. E. 292.
[23] ABBOTT'S LAW DICTIONARY.

the property beneficially belongs. In this definition the term "technical ownership" is used rather than the term "legal title" to cover the case of a trust of an equitable estate. Such trusts are not common. The usual kind of trust, with a single trustee and *cestui que trust,* may be defined as an arrangement of property in which the legal title is vested in one person who is to hold, administer, or otherwise deal with the property, as may be directed, for the benefit of another person who is the equitable owner. These definitions cover trusts created by a declaration of trust by the holder of the legal title as well as those created by a transfer of the legal title to the trustee. Possibly they do not precisely denote implied trusts, but it is not important that they should do so, for implied trusts are not properly called trusts. They are at best only *quasi* trusts. A definition of a trust that would include them would be too broad. The definitions here submitted may not be satisfactory, but to this time they are the best the writer has been able to frame.

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